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Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from South Africa, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: English]

Letter dated 24 December 2001 from the Permanent Representative of South Africa to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Security Council Counter-Terrorism Committee: report of the Republic of South Africa on measures taken to implement resolution 1373 (2001)

On instructions from my Government, I have the honour to submit herewith the report of South Africa to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

The Government of South Africa wishes to convey to the Counter-Terrorism Committee its support and cooperation with the ongoing work of the Committee.

I should be grateful if you would circulate the present letter and the enclosed report as a document of the Security Council.

(*Signed*) Dumisani S. **Kumalo**
Ambassador
Permanent Representative

Enclosure

SOUTH AFRICA'S NATIONAL REPORT SUBMITTED PURSUANT TO PARAGRAPH 6 OF SECURITY COUNCIL RESOLUTION 1373 (2001) TO THE SECURITY COUNCIL COUNTER-TERRORISM COMMITTEE: THE IMPLEMENTATION OF OPERATIVE PARAGRAPHS 1 TO 3 OF RESOLUTION 1373 (2001)

SECTION A: OPERATIVE PARAGRAPH 1

The implementation of operative paragraph 1 (a) to (d) of Security Council resolution 1373 (2001)

Question 1: What relevant legislation (including regulations or other legislative machinery) is in place or is contemplated to give effect to the measures contained in operative paragraph 1 (a) to (d) of resolution 1373 (2001)?

Response:

1.1 The South African Government has the following legislation or other legislative machinery in place to give effect to the measures contained in paragraph 1 (a) to (d):

1.1.1 Currency and Exchange Act, 1933 (Act No. 9 of 1933) and Exchange Control Regulations, 1961

In terms of Exchange Control Regulations, 1961, promulgated in terms of section 9 of the Currency and Exchange Act, 1933 (Act No.9 of 1933), the control over South Africa's foreign currency reserves, as well as the accrual and spending thereof, is vested in the Treasury. The Regulations define the Treasury as the Minister of Finance or an officer in the Department of Finance who, by virtue of the division of work in that Department deals with the matter on the authority of the Minister of Finance. The Act is attached as Addendum A

The Minister of Finance has in terms of the Regulations appointed the Exchange Control Department of the South African Reserve Bank to carry out certain functions assigned to the Treasury, and as such the Department is responsible for the day-to-day administration of exchange control.

The Minister of Finance has also appointed certain banks to act as Authorised Dealers in foreign exchange. This appointment gives the Authorised Dealers the right to buy and sell foreign currency, but under the conditions and within the limits prescribed by the Exchange Control Department to the Authorised Dealers through Exchange Control Circulars.

The Act empowers the Minister of Finance to instruct Authorised Dealers to freeze funds and financial resources and block accounts held in South Africa and to prohibit the movement of capital into and out of South Africa.

Regulation 3 of the Exchange Control Regulations provides for the restriction on the export of currency, gold, securities etc. and import of South African Bank notes. In particular, Regulation 3(1)(c) provides as follows:

"3. (1) Subject to any exemption which may be granted by the Treasury or a person authorised by the Treasury, no person shall, without permission granted by the Treasury or a person authorised by the Treasury and in accordance with such conditions as the Treasury or such authorised person may impose –

(c) make any payment to, or in favour, or on behalf of a person resident outside the Republic, or place any sum to the credit of such person;"

The Exchange Control Department of the South African Reserve Bank may, therefore, through the issuing of an Exchange Control Circular, grant or withdraw a specific exemption.

The Treasury may also in terms of a Notice under Regulation 4 (3) of the Exchange Control Regulations direct that all sums due by any other person to persons resident in a particular country or any particular person whom the Treasury has reasonable grounds to suspect of having contravened any provision of the Exchange Control Regulations relating to foreign exchange be paid into a blocked account.

1.1.2. Regulation of Foreign Military Assistance Act, 1998 (Act No 15 of 1998)

The Act prohibits any person within South Africa and elsewhere from rendering any foreign military assistance to any person unless he or she has been granted authorisation by the National Conventional Arms Control Committee (NCACC), in consultation with the Minister of Defence. The NCACC is a Ministerial controlling committee that was established by an August 1995 Cabinet decision to oversee South Africa's conventional arms control policies and related arms transactions, in consultation with the Minister of Defence.

The Act provides that any person who contravenes a provision of the Act (i.e. by providing unauthorised military assistance) shall be guilty of an offence and liable on conviction to a fine or to imprisonment or both.

Foreign Military Assistance is broadly defined and includes military or military- related services, attempts, encouragement, incitement or solicitation. Regulated services include advice or training, personnel, financial, logistical, intelligence or operational support; personnel recruitment; medical or para-medical services; security services; any action aimed at overthrowing a State or undermining its constitutional order or any other action.

In its consideration of applications related to foreign military assistance, the NCACC is guided by the Act. Any person wishing to obtain authorisation, or seeking to obtain approval of an agreement or arrangement for the rendering of foreign military assistance, needs to submit an application to the NCACC. In this regard, the Act contains criteria for the granting or refusal of such authorisations and approvals, stipulating that these may not be granted if, amongst others, the authorisation or approval would "be in conflict with the Republic's obligations in terms of international law" (Section 7(1)(a)) or if it would "support or encourage terrorism in any manner" (Section 7(1)(d)). The Act is attached as Addendum B.

1.1.3 Prevention of Organised Crime, 1998 (Act No 121 of 1998)

This Act was specifically passed to deal with crime syndicates operating in South Africa. Any person who participates in the activities of a criminal enterprise (even if there is no evidence linking that person to a specific crime) could be acting in contravention of this Act. An accused convicted under this Act could face a maximum fine of one billion Rand or life imprisonment. This Act also contains the offences of money laundering and related activities. The Prevention of Organised Crime Act compels businesses to report all transactions of a suspicious nature. This Act has repealed the Proceeds of Crime Act of 1996 and now incorporates provisions relating to the confiscation of the proceeds of crime. Consequently the Prevention of Organised Crime Act now empowers the courts to order that the benefit that an offender

had derived from the offence, of which he/she had been convicted, may be confiscated. Upon application by the Office of the National Director of Public Prosecutions to the High Court, property of persons implicated under this Act may be forfeited to the State. Finances generated though the forfeiture of assets will be used to assist law enforcement agencies fighting crime as well as the victims of crime. The Act is attached as Addendum C

1.1.4 Internal Security Act, 1982 (Act No 74 of 1982)

The Internal Security Act provides that:

"Any person who with intent to-

(a) overthrow or endanger the State authority in the Republic;
(b) achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change in the Republic; or
(c) induce the Government of the Republic to do or to abstain from doing any act or to adopt or to abandon a particular standpoint;

in the Republic or elsewhere-

(i) commits an act of violence or threatens or attempts to do so;
(ii) performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence, or attempts, consents or takes any steps to perform such act;
(iii) conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (i) or act referred to in paragraph (ii), or to aid in the commission, bringing about or performance thereof; or
(iv) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or threat,

shall be guilty of the offence of terrorism and liable on conviction to the penalties provided for by law for the offence of treason."

The aforementioned section 54 (1) of the Internal Security Act enables prosecution for terrorism, including ancillary acts as set out in sub paragraphs (i)-(iv) of the section, with intent mentioned in paragraphs (a) to (c) of the section. The Act is attached as Addendum D

It must be noted that the application of section 54 of the Internal Security Act is restricted in two important aspects. Firstly it is aimed at criminalising terrorist acts directed against the constitutional order of the Republic of South Africa. Secondly the Act only relates to an act of violence and therefore does not address other forms of terrorism, such as bio-terrorism and cyber terrorism or the funding of terrorism. Legislative amendments are being proposed to address these shortcomings (see paragraph A.1.2.1 below).

1.2 The South African Government is contemplating the following new legislation to give effect to paragraph 1 (a) to (d) of resolution 1373 (2001):

1.2.1 Anti-Terrorism Bill

An Anti-Terrorism Bill has been drafted by the South African Law Commission (SALC) and distributed as a Discussion Paper for public comment. The Bill inter alia incorporates the existing UN Conventions, including those which South Africa has not yet ratified, and once it is adopted will provide a sound legislative basis from which to ratify the existing international conventions against terrorism. At present the South African Law Commission (SALC) is collating all the public comments received on the Bill

(over 5000) after which the SALC Project Committee will meet again, prepare a second draft of the Bill and submit it through the parliamentary processes for approval.

In its current form the Bill deals with international and domestic acts of terrorism in a comprehensive manner and is intended to create specific legislation based on international instruments. This is done for two reasons: firstly to broaden the normal jurisdiction of the courts to deal with all forms of terrorism, especially those committed outside the normal jurisdiction of courts, and secondly to proscribe the most severe instances of terrorist acts. A copy of the SALC Discussion Paper (including the Anti-Terrorism Bill) is attached as Addendum E

Clause 3 of the Bill prohibits the provision of material support in respect of terrorist acts. Material support or resources is broadly defined in Clause 1 to mean "funds, or financing, financial services, lodging, training, safe houses, false documentation, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation and other physical assets, funds or financing".

"Funds" is similarly broadly defined in Clause 1 to mean "cash, assets or any other property, tangible or intangible, however acquired; and notably any type of financial resource, including cash or the currency of any State, bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form".

The prohibition for the provision of material support is dealt with in Clause 3 of the Bill as follows:

"Providing material support in respect of offences under this Act

3. (1) Any person who –

(a) provides material, logistical or organisational support or any resources; or

(b) conceals or disguises the nature, location, source, or ownership of such support or resources.

knowing or intending that such support or resources are to be used –

(i) in the commission of an offence under the provisions of this Act; or

(ii) in the concealment or an escape from the commission of an offence under the provisions of this Act; or

(c) participates in the activities of a terrorist organisation.

(2) Any person –

(a) who knows that any other person intends to commit or has committed any offence under this Act; and

(b) who harbours or conceals that other person..

Commits an offence and is liable on conviction to the penalty for the offence which that person intended to commit or has committed, as the case may be."

1.2.2 Legislative framework for the implementation of international sanctions

Security Council sanctions have to date been enforced within the framework of existing legislation and other legislative machinery. A review is currently underway with the aim of strengthening the legislative framework for the implementation and administration of international sanctions on a case-by-case basis.

1.2.3 Financial Intelligence Centre Bill

The Financial Intelligence Centre (FIC) Bill was adopted by the South African Parliament on 6 November 2001. It will enter into force when assented to by the President. The Bill draws extensively on international best practice and provides the South African Government with the tools to play an important role in combating all money laundering activities. A copy of the Bill is attached as Addendum F

The object of the FIC Bill is to introduce mechanisms and measures aimed at preventing and combating a wide range of money laundering activities. It sets up an anti-money laundering regime which encourages voluntary compliance and self-regulation by institutions which otherwise may be exploited for money laundering purposes. To this extent, the FIC Bill complements the Prevention of Organised Crime Act, of 1998.

Question 2: What executive action has been taken or is contemplated to give effect to the measures contained in paragraph 1 (a) to (d) of resolution 1373 (2001)?

Response:

2.1 National Working Group

The South African Government has established an Inter-Departmental Counter-Terrorism Working Group to monitor and oversee the implementation of resolution 1373 (2001). The Department of Foreign Affairs chairs the Working Group which comprises the relevant Government Departments and members of the intelligence structures.

2.2 Financial restrictions imposed against the Taliban

The South African Reserve Bank has circulated seven Exchange Control Circulars advising all authorised dealers that, due to UN sanctions, they are not allowed to make any funds and/or financial or economic resources available to the Taliban, as well as to Usama bin Laden and individuals associated with him. The Exchange Control Circulars have also requested all authorised dealers to report any facilities or assets of this nature that might have been in place before the sanctions were imposed, as well as any future attempts by the private sector to enter into transactions with the prohibited parties and persons. The Exchange Control Circulars in question are No D. 302 of 13 September 2000, No D. 314 of 13 February 2001, No D. 339 and No D. 340 of 12 October 2001, No D. 343 of 2 November 2001, No D. 349 of 23 November 2001, and No D. 351 of 3 December 2001. Exchange Control Circulars No D. 339, D. 340, D. 343, D. 349 and D. 351 contained the details of the individuals and entities that were listed by the Security Council Committee on Afghanistan in March 2001, October 2001 and November 2001.

2.3 Financial restrictions imposed against organisations, entities and individuals identified as being associated with terrorist acts or terrorist organisations

The South African Reserve Bank has issued a list of individuals and organisations believed to be involved in the terror attacks in the USA (as provided in the US Executive Order of 23 September 2001) to all banking institutions in the country. In a letter dated 28 September 2001 the Registrar of Banks directed banks in terms of section 7 (1) (a) of the Banks Act (Act 94 of 1990) to search their records in order to identify any relationship or involvement with any individuals or organisations who's names appear on these lists. All information obtained in this way regarding accounts of the said individuals or

organisations must be supplied to the Registrar of Banks, who will appoint inspectors to perform preliminary forensic investigations on the transactions and counterparties. The results of these investigations will be reported to the relevant authorities.

In addition, the South African Government published a Notice in the Government Gazette No 22752, with Notice Number R 1036, on 12 October 2001. The Notice contained the details of the individuals and entities that were listed in the US Executive Order of 23 September 2001 (that was endorsed by the United Nations on 8 October 2001). The South African Reserve Bank issued Exchange Control Circular No D. 340 on 12 October 2001 informing all authorised dealers of the contents of the Government Notice.

This list was further updated on 2 November 2001 when the SA Reserve Bank issued Exchange Control Circular No. D 343, which adds the names of those organisations and individuals identified by the United Nations (UN) on 19 October 2001.

There has been no list which was endorsed or issued by the UN in terms of UNSC resolution 1373 (2001). This makes the practical implementation of paragraph 1 of resolution 1373 (2001) by the National Treasury and South African Reserve Bank very difficult. The National Treasury and South African Reserve Bank can only be able to (significantly) effect paragraph 1 if there is a list of such persons. Such a list will ensure that no funds are made available to the designated persons in terms of South Africa's Exchange Control Regulations.

Question 3: What other action, if any, has so far been taken to implement the letter and spirit of paragraph 1 (a) to (d) of resolution 1373 (2001) or is contemplated?

Response:

3.1 Investigations

Extremist organisations and individuals that are known to Crime Intelligence and that have the ability to gather funds are being monitored. Crime Intelligence has already identified individuals and organisations that could gather funds for terrorist activities. These organisations' "individual" bank accounts are currently being investigated.

3.2 Financial Monitoring

The Reserve Bank has a well-developed transaction-reporting regime, which records all cross border foreign exchange flows via Authorised Dealers in foreign exchange. Research is done on a continuous basis to trace any transactions alleged to be involved in the financing of terrorist acts. The results are communicated to the South African Police Service.

Question 4: What steps are being taken to enhance international co-operation in the areas covered by paragraph 1 (a) to (d) of resolution 1373 (2001)? What international agreements have been ratified or acceded to?

Response:

4.1 Transnational Organised Crime Convention

South Africa signed the Transnational Organised Crime Convention (the Palermo Convention) in December 2000. The Department of Justice and Constitutional Development is currently processing the Convention through the constitutional procedures required to ratify the Convention.

4.2 The International Convention for the Suppression of the Financing of Terrorism

The Government of the Republic of South Africa signed the Convention on 10 November 2001. The necessary legislative and constitutional processes are currently being undertaken in order to give domestic legal effect to the provisions of this Convention.

4.3 Bilateral agreements with the Common Monetary Area Member States

South Africa entered into bilateral agreements with other members of the Common Monetary Area i.e. Lesotho, Swaziland and Namibia regarding financial policy measures implemented in the Southern African Region. Similar transaction reporting systems are most likely to be implemented in the near future with the assistance of the Reserve Bank. Common issues are frequently discussed on a formal and informal basis, which will include co-operation between Member States to suppress the financing of terrorist acts.

4.4 Police Co-operation Agreements

The South African Police Service co-operates internationally in respect of the exchange of criminal information and police co-operation, including the use of the Interpol channels. The South African Police Service (SAPS) has concluded police co-operation agreements which, without mentioning terrorism specifically, can be used to obtain co-operation in terrorism investigations. One example in this regard is the Agreement in respect of Co-operation and Mutual Assistance in the Field of Crime Combating concluded on 1 October 1997 between 12 Southern African States, namely Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Zambia, Zimbabwe and Tanzania. This agreement provides for cross border investigations and operations in general and even undercover operations. It could also be used for counter-terrorist investigations/operations. The SAPS has concluded police co-operation agreements with a number of other States.

Question 5: Operative sub-paragraph 1(a): What measures, if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d)?

Response:

5.1 None, other than those indicated in the responses to the questions on paragraph 1 (b) to (d) above (please refer to the responses to questions 2, 3 and 4 above).

Question 6: Operative sub-paragraph 1(b): What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

Response:

6.1 At present, South Africa does not have legislation relating specifically to the financing of terrorism. However the Exchange Control Regulations do provide a basis to penalize the financing of terrorist acts (as explained in paragraph 1(a)(i) above). Exchange Control Regulation 22 provides that every person who contravenes or fails to comply with any provision of the Exchange Control Regulations shall be guilty of an offence and liable upon conviction to imprisonment for a period not exceeding 5 years and/or a fine not exceeding the monetary value of the transaction or R250 000-00 whichever the greater. Treasury may also block accounts and attach money and/or goods.

Question 7: Operative sub-paragraph 1(c): What legislative procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

Response:

7.1 As set out in paragraph A.1.1.1 above, the following legislative procedures for freezing accounts and assets at banks and financial institutions exist:

Currency and Exchange Act, 1933 (Act No. 9 of 1933) and Exchange Control Regulations, 1961

In terms of Exchange Control Regulations, 1961, promulgated in terms of section 9 of the Currency and Exchange Act, the control over South Africa's foreign currency reserves, as well as the accrual and spending thereof, is vested in the Treasury. The Regulations define the Treasury as the Minister of Finance or an officer in the Department of Finance who, by virtue of the division of work in that Department deals with the matter on the authority of the Minister of Finance. The Act is attached as Addendum A.

The Minister of Finance, in terms of the Regulations, has appointed the Exchange Control Department of the South African Reserve Bank to carry out certain functions assigned to the Treasury, and as such the Department is responsible for the day-to-day administration of exchange control.

The Minister of Finance has also appointed certain banks to act as Authorised Dealers in foreign exchange. This appointment gives the Authorised Dealers the right to buy and sell foreign currency, but under the conditions and within the limits prescribed by the Exchange Control Department to the Authorised Dealers through Exchange Control Circulars.

The Act empowers the Minister of Finance to instruct Authorised Dealers to freeze funds and financial resources and block accounts held in South Africa and to prohibit the movement of capital into and out of South Africa.

Regulation 3 of the Exchange Control Regulations provides for the restriction on the export of currency, gold, securities etc. and import of South African Bank notes. In particular, Regulation 3(1)(c) provides as follows:

"3. (1) Subject to any exemption which may be granted by the Treasury or a person authorised by the Treasury, no person shall, without permission granted by the Treasury or a person authorised by the Treasury and in accordance with such conditions as the Treasury or such authorised person may impose –

(c) make any payment to, or in favour, or on behalf of a person resident outside the Republic, or place any sum to the credit of such person;"

The Exchange Control Department of the South African Reserve Bank may, therefore, through the issuing of an Exchange Control Circular, grant or withdraw a specific exemption.

The Treasury may also in terms of a Notice under Regulation 4 (3) of the Exchange Control Regulations direct that all sums due by any other person to persons resident in a particular country or any particular person whom the Treasury has reasonable grounds to suspect of having contravened any provision of the Exchange Control Regulations relating to foreign exchange be paid into a blocked account.

Question 8: Operative sub-paragraph 1(d): What measures exist to prohibit the activities listed in this sub-paragraph?

Response:

8.1 As mentioned in the response to question 7 above, the Exchange Control Department of the South African Reserve Bank may, through the issuing of an Exchange Control Circular grant or withdraw a specific exemption. Current exemptions granted include the granting of monetary gifts and loans by South African residents to non-residents abroad up to an amount of R25 000-00 per resident during a calendar year. It follows therefore that requests by South African residents to transfer funds in excess of this amount require specific Exchange Control approval. The Exchange Control Department requires detailed information before granting this authorisation. An application must be submitted through one of the Authorised Dealers. The latter must state whether or not they recommend the transaction and their reasons for giving or withholding their recommendation. The authorisation process at the Exchange Control Department includes an electronic system that will automatically prevent approval where any of the names listed in the Circulars mentioned in response 2.3 above are involved.

SECTION B: OPERATIVE PARAGRAPH 2

The implementation of operative paragraph 2(a) to (g) of Security Council resolution 1373 (2001)

Question 1: What relevant legislation (including regulations or other legislative machinery) is in place or is contemplated to give effect to the measures contained in operative paragraph 2 (a) to (g) of resolution 1373 (2001)?

Response:

1.1 The South African Government has the following legislation or other legislative machinery in place to give effect to the measures contained in paragraph 2 (a) to (g):

1.1.1 Aliens Control Act, 1991 (Act No 96 of 1991)

The Act empowers the Minister of Home Affairs if s he considers it to be in the public interest, to order the arrest and removal of any person who is not a South African citizen. A person may also be prohibited from admission to and residence in the Republic. The Department of Home Affairs has computerised visa and passport stop-lists to prevent the entry of prohibited persons. In order to improve the control over the cross border movement of persons and goods by air, the number of international airports has been reduced from 40 to 10. This has enabled the implementing authorities to concentrate their efforts and resources with a view to greater effectiveness. The Act is attached as Addendum G

1.1.2 International Air Service Act, 1993 (Act No 60 of 1993)

According to the Act, "no person shall use an aircraft to operate an international air service except under and in accordance with the provisions and subject to the conditions of a foreign operator's permit issued to such a person in terms of this act".

All foreign operators must apply to the Chairperson of the International Air Services Council for a Foreign Operators Permit (FOP) to operate commercially into and from South Africa. During the processing of the applications, the Department of Transport works closely with the South African Police Service, the Airports Company South Africa and the Air Traffic Navigational Services, the South African Civil Aviation Authority and any other relevant national Departments. No Foreign Operators Permits are issued for the transportation of armaments and related goods without the SAPS export permits and an exemption from the CAA for carriage by air. This Act is attached as Addendum H.

1.1.3 The Civil Aviation Offences Act, 1972 (Act No 10 of 1972)

The Civil Aviation Offences Act. 10 of 1972 addresses The Hague, Tokyo and Montreal International Aviation Security Conventions. The Act has been prepared for amendment and is in the final stages of preparation for publication. This Act applies also to the Civil Aviation Safety Regulations of 1981, which in turn gives powers to the National Aviation Security Committee (NASC) which is chaired by the Commissioner for Civil Aviation to advise the Minister on any matters relating to aviation safety and the National Safety Plan (NSP). The interim NSP has been completed and lies with the Minister of Transport for approval. The NSP covering the requirements of the ICAO Annexure 17 (International Minimum Security Standards and Recommendations) has been completed. This Act is attached as Addendum I.

1.1.4 Non Proliferation

The South African Government has since its inauguration in May 1994, committed itself to a policy of non-proliferation, disarmament and arms control which covers all weapons of mass destruction and extends to concerns relating to the proliferation of conventional weapons. On 30 August 1995 the South African Cabinet approved an Interim Arms Control Policy. The policy makes provision for a ministerial controlling committee, the National Conventional Arms Control Committee (NCACC), guiding principles and guidelines, and an organisational structure for processing transactions. The NCACC has been chaired since its inception in April 1996 by Professor A. K. Asmal, the current Minister of Education.

The organisational structure of the NCACC comprises of four levels of responsibility:

1) An initial permit application technical processing level, which is done by the Directorate for Conventional Arms Control (DCAC) of the South African National Defence Force;
2) A multi-departmental review and recommendation process on permit applications;
3) This process is performed by the Scrutiny Committee consisting of senior representatives of the relevant Government Departments; and
4) A control, policy and decision-making authority, which is performed by the NCACC.

In order to codify the establishment of the NCACC as the implementing body for Government policy on conventional arms control and the control of services, a National Conventional Arms Control (NCACC) Bill has been drafted and will be tabled in Parliament shortly. The Bill spells out the NCACC's organisational, control and inspection functions, including certain guiding principles and criteria that are to be taken into account when considering permit applications.

These criteria, that have also been included in the NCACC Bill stipulate, amongst others, that the NCACC must:

- "avoid endangering regional and international peace and stability by introducing destabilising military capabilities into a region, which could aggravate or prolong any existing armed conflicts" (Section 15(d));
- "adhere to international law, norms and practices and the international obligations and commitments of South Africa, including United Nations arms embargoes" (Section 15(e)); and
- "avoid contributing to terrorism and crime" (Section 15 (g)).

It should be noted that under current procedures the NCACC already adheres to the above criteria in its consideration of permit applications.

1.1.5 Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No 87 of 1993)

South Africa's non-proliferation controls are implemented by the South African Council for Non-Proliferation (NPC). The Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No 87 of 1993) provides the statutory authority for the NPC to control the export, import, transit and re-export of South African dual-use technology, material and equipment which could be used in the production of weapons of mass destruction and other advanced weapons systems.

Dual-use capabilities are defined by the Act as "those capabilities relating to technology, expertise, service, material, equipment and facilities which can contribute to the proliferation of weapons of mass destruction, but which could also be used for other purposes, including conventional military, commercial and educational use". These goods could form part of larger weapons systems or could be purely for civilian use.

The Act also provides the necessary legal framework for the implementation, within South Africa, of the non-proliferation and arms control obligations, which would arise out of South Africa's participation in the various export control regimes. Act is attached as Addendum J.

1.1.6 Regulation of Foreign Military Assistance Act, 1998 (Act No 15 of 1998)

The Act prohibits any person within South Africa and elsewhere from rendering any foreign military assistance to any person unless he or she has been granted authorisation by the National Conventional Arms Control Committee (NCACC) in consultation with the Minister of Defence.

The Act provides that any person who contravenes a provision of the Act (i.e. by providing unauthorised military assistance) shall be guilty of an offence and liable on conviction to a fine or to imprisonment or to both fine and imprisonment.

Foreign Military Assistance is broadly defined and includes military or military-related services, attempts, encouragement, incitement or solicitation. Regulated services include advice or training, personnel, financial, logistical, intelligence or operational support; personnel recruitment; medical or para-medical services; security services; any action aimed at overthrowing a State or undermining its constitutional order or any other action.

In its consideration of applications related to foreign military assistance, the NCACC is guided by the Act. Any person wishing to obtain authorisation, or seeking to obtain approval of an agreement or arrangement for the rendering of foreign military assistance, needs to submit an application to the NCACC. In this regard, the Act contains criteria for the granting or refusal of such authorisations and approvals, stipulating that these may not be granted if, amongst others, the authorisation or approval would "be in conflict with the Republic's obligations in terms of international law" " (Section 7(1)(a)) or if it would "support or encourage terrorism in any manner" (Section 7(1)(d)). The Act is attached as Addendum B.

1.1.7 The Armaments Development and Production Act, 1968 (Act No 57 of 1968)

In terms of this Act no armaments (conventional arms) shall be marketed, exported, imported, conveyed, developed or manufactured except under the authority of and according to the conditions stated in a permit issued by the Minister of Defence or by a person authorised by him. The NCACC executes the provisions of this Act, some of which will be replaced with the promulgation of the National Conventional Arms Control Bill. The Act is attached as Addendum K.

1.1.8 The Arms and Ammunition Act, 1969 (Act No 75 of 1969)

The Act provides that (1) that no person shall, unless authority is granted, import into the Republic or supply any person with or have in his/her possession any armament, (2) no person shall export any arms or ammunition except on behalf of the State and with a permit, (3) no person shall manufacture any armament except with authorisation. A person importing any armament in contravention of the Act commits an offence and is liable on conviction to imprisonment for a period not exceeding 25 years. A person exporting any arms or ammunition in contravention of the Act commits an offence and will be liable on conviction to imprisonment for a period not exceeding 25 years. Any person manufacturing ammunition in contravention of the Act commits an offence and will be liable on conviction to a fine not exceeding R12 000 or to imprisonment for a period not exceeding 3 years or to both fine and imprisonment. The Act is attached as Addendum L.

1.1.9 Other legislation

In addition to legislation mentioned above, South Africa also has a vast legislative framework in which to prosecute terrorist acts. This includes:

- the Intimidation Act, 1982 (Act No 72 of 1982);
- the State of Emergency Act, 1997 (Act No 64 of 1997);
- the Explosives Act, 1956 (Act No 26 of 1956);
- the Judicial Matters Amendment Act, 1998 (Act No 34 of 1998), (paramilitary training);
- the Criminal Procedure Act, 1977 (Act No 51 of 1977);
- the Merchant Shipping Act, 1957 (Act No 57 of 1951);
- the Nuclear Energy Act, 1999 (Act No. 46 of 1999);
- the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No 87 of 1993);
- the Defence Act, 1957 (Act No 44 of 1957);
- the National Key Points Act, 1980 (Act No 102 of 1980);
- the Protection of Information Act, 1982 (Act No 84 of 1982);
- the Civil Protection Act, 1977 (Act No 67 of 1977) the Regulation of Gatherings Act, 1993 (Act No 205 of 1993);
- the Films and Publications Act, 1996 (Act No 65 of 1996) (hate and war speech);
- the Riotous Assemblies Act, 1956 (Act No 17 of 1956);
- the Interception and Monitoring Prohibition Act, 1992 (Act No 127 of 1992).

The South African Law Commission (SALC) Discussion Paper, which is attached to this report as Addendum E, gives a summary of the above-mentioned legislation together with an indication of how this legislation, and common law offences can be utilised to prosecute terrorist acts.

1.2 The South African Government is contemplating the following new legislation to give effect to paragraph 2 (a) to (g) of resolution 1373 (2001):

1.2.1 National Conventional Arms Control Bill

While the National Conventional Arms Control Bill mentioned under question B 1.1 above was not drafted specifically in response to SCR 1373, it will be utilised to give effect to that resolution. As mentioned above, it will codify the establishment of the NCACC as the implementing body for Government policy on conventional arms control and the control of services. A National Conventional Arms Control Bill has been drafted and will be tabled in Parliament shortly. The Bill spells out the NCACC's organisational, control and inspection functions, including certain guiding principles and criteria that are to be taken into account when considering permit applications.

These criteria, that have also been included in the NCACC Bill stipulate, amongst others, that the NCACC must:

- "avoid endangering regional and international peace and stability by introducing destabilising military capabilities into a region, which could aggravate or prolong any existing armed conflicts" (Section 15(d));
- "adhere to international law, norms and practices and the international obligations and commitments of South Africa, including United Nations arms embargoes" (Section 15(e)); and
- "avoid contributing to terrorism and crime" (Section 15 (g)).

1.2.2 Legislative framework for the implementation of international sanctions

Security Council sanctions have to date been enforced within the framework of existing legislation and other legislative machinery. A review is currently underway with the aim of strengthening the legislative framework for the implementation and administration of international sanctions on a case-by-case basis.

1.2.3 Anti-Terrorism Bill

An Anti-Terrorism Bill has been drafted by the South African Law Commission (SALC) and distributed for public comment. The Bill inter alia incorporates the existing UN Conventions, including those, which South Africa has not yet ratified, and once it is adopted it will provide a sound legislative basis from which to ratify the existing international conventions against terrorism. At present the South African Law Commission is collating all the public comments received on the Bill (over 5000) after which the SALC Project Committee will meet again, prepare a second draft of the Bill and submit it through the parliamentary processes for approval.

As indicated in A.1.2.1 above, the Anti-Terrorism Bill will address the provision of support for terrorist acts. Clause 3 of the Bill prohibits the provision of material support in respect of terrorist acts. Material support or resources is broadly defined in Clause 1 to mean "funds, or financing, financial services, lodging, training, safe houses, false documentation, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation and other physical assets, funds or financing".

The prohibition for the provision of material support is dealt with in Clause 3 of the Bill as follows:

"Providing material support in respect of offences under this Act

3 (1) Any person who –

(d) provides material, logistical or organisational support or any resources; or

(e) conceals or disguises the nature, location, source, or ownership of such support or resources.

knowing or intending that such support or resources is to be used –

(iii) in the commission of an offence under the provisions of this Act; or

(iv) in the concealment or an escape from the commission of an offence under the provisions of this Act; or

(f) participates in the activities of a terrorist organisation.

(2) Any person –

(a) who knows that any other person intends to commit or has committed any offence under this Act; and

(b) who harbours or conceals that other person.

Commits an offence and is liable on conviction to the penalty for the offence which that person intended to commit or has committed, as the case may be."

1.2.4 International Criminal Court Bill

South Africa has on 10 November 2000 ratified the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998. Where terrorist acts will also fall under the ambit of the Statute of the International Criminal Court, this could also assist in combating terrorism. In this regard, a Bill, the International Criminal Court Bill, is presently being considered by Parliament. The Bill provides for the incorporation of the Rome Statute into South African domestic law, the prosecution of

persons accused of the crime of genocide, crimes against humanity, war crimes and the crime of aggression in South Africa (wherever committed), the surrender of such persons to the International Criminal Court and legal assistance to that Court.

Question 2: What executive action has been taken or is contemplated to give effect to the measures contained in paragraph 2 (a) to (g) of resolution 1373 (2001)?

Response:

2.1 Border Control Operational Co-ordinating Committee

In order to enhance joint actions between the Intelligence Community of South Africa and the Department of Home Affairs, the Border Control Operational Co-ordinating Committee (BCOCC) has been created, which will implement preventative measures at borders. The BCOCC reports to the Cabinet Cluster Committee on Justice, Crime Prevention and Security. Mechanisms to control the movement of terrorists, which include the lists that are controlled by the relevant role players, are in place at ports of entry/exit. To this end, all ports of entry/exit are computerised.

The Border Control Departments (SA Police Service and SA Revenue Service) also upgraded their security measures in respect of the flow of armaments (conventional and commercial) across borders.

It is further envisaged that pending the availability of funds, an upgrade of the Movement Control System is proposed as well as the roll out of facial biometrics technology.

2.2 Security measures at South African airports

Since the 11 September 2001 terrorist attacks, the United States of America has issued several Emergency Amendments (EAs) regarding their requirements for Air Carriers flying to and from their country. All these EAs have been implemented by the National Carrier and have been subject to FAA evaluation. The National Aviation Security Committee has had several emergency sessions to determine the level of enhanced security measures to be adopted by all designated airports and main feeder airports. The Civil Aviation Authority has also increased its oversight of these Airports to assess the effectiveness of the measures implemented at these Airports.

South Africa has implemented 100% Hold Baggage Screening at the three main airports used as a last point of departure for intercontinental flights. This system has been up and running for over a year and incorporates FAA accredited screening technology.

2.3 National Counter-Terrorism Working Group

The South African Government has established an Inter-Departmental Counter-Terrorism Working Group to monitor and oversee the implementation of resolution 1373 (2001). The Department of Foreign Affairs chairs the Working Group and it comprises the relevant Government Departments and members of the intelligence structures.

2.4 Establishment of an inter-departmental working group on unregulated foreign military assistance

An Inter-Departmental Working Group, which focuses on unregulated foreign military assistance has been convened and is chaired by the South African Police Service. This Working Group meets on an ad hoc basis to exchange information with the aim of prosecuting offenders.

2.5 Establishment of Joint Operational and Intelligence Structure (NATJOC)

The Security and Intelligence structures in the Republic have also established, subsequent to the 11 September 2001 incidents, a national joint operational committee to co-ordinate all operational activities and intelligence which will also serve the effective operational implementation of certain of the contents of resolution 1373 (2001). This committee, the National Joint Operational Committee (NATJOC), is constituted of all security and intelligence agencies in South Africa, as well as with Disaster Management, Department of Home Affairs, SA Civil Aviation Authority (CAA) and the Department of Foreign Affairs. It oversees the operationalisation of various Operational Instructions issued to deal with the subject of counter-terrorism.

Question 3: What other action, if any, has so far been taken to implement the letter and spirit of paragraph 2 (a) to (g) of resolution 1373 (2001) or is contemplated?

Response:

3.1 Airports

The Department of Transport, together with the South African Civil Aviation Authority, are monitoring travel details and implementing all International Civil Aviation Organisation (ICAO) and the United States Federal Aviation Authority recommendations.

3.2 Air Traffic Navigational Services (ANTS)

In the wake of the 11 September 2001 terror attacks, the ANTS has verified all its operational Emergency and Reporting Procedures. It has also embarked on a drive to confirm that associated organisations and entities have complementary, relevant and appropriate plans to cope with the magnitude of the threat. In addition to the re-evaluation of all procedures, security around the towers and radar control centres at all sites has been tightened considerably. R2 million has been set aside to cover this expenditure with immediate effect. These projects are due to be completed by mid-December 2001. All Air Traffic Control (ATC) procedures were reviewed to ensure that it caters for the new type of threat.

The ANTS is an active member of the National Aviation Security Committee, which under the leadership of the South African Civil Aviation Authority, is charged to co-ordinate and integrate the emergency plans of all role players in the aviation industry. This Committee is in the process of actively reviewing all inter-organisational procedures.

3.3 Arms embargo

The National Conventional Arms Control Committee (NCACC) imposed a moratorium on the sales of arms and military equipment to Afghanistan in 1995. The status of this moratorium remains unchanged.

3.4 United Nations restrictions on the movement of Taliban officials

The Department of Home Affairs has placed those Taliban officials, who have been identified by the Security Council Committee on Afghanistan in March 2001 as being affected by sanctions, on South Africa's visa and entry stoplist. The Security Council Committee added names to the consolidated list on 8 and 19 October 2001, as well as on 9 November 2001. The Department of Home Affairs has placed the necessary restrictions on the individuals and entities that were added to the United Nations consolidated list of 8 March 2001. On 26 November 2001, the Security Council Committee issued a new consolidated list, which supersedes all previous lists. The Department of Home Affairs has placed restrictions on the individuals and entities that were listed in this consolidated list.

Question 4: What steps are being taken to enhance international co-operation in the areas covered by paragraph 2 (a) to (g) of resolution 1373 (2001)? What international agreements have been ratified or acceded to?

Response:

4.1 Anti-Terrorism Conventions

The South African Government has signed the United Nations (UN) Conventions that are open for signature. It has the firm intention of submitting each Convention to Parliament for ratification in accordance with its constitutional procedures and ensuring that the necessary legislation to implement each Convention in its domestic law is in place.

The following UN international Conventions have been signed:

- Convention on the Physical Protection of Nuclear Materials, adopted at Vienna on 26 October 1979.
- International Convention for the Suppression of Terrorist Bombings, adopted by the GA on 15 December 1997; entered into force on 23 May 2001. South Africa signed on 23 December 1999.
- International Convention for the Suppression of Terrorist Financing, adopted by the GA on 9 December 1999. South Africa signed on 10 November 2001.

South Africa has also signed the Convention of the Organisation of African Unity on the Suppression and Combating of Terrorism on 12 July 1999.

South Africa has ratified or acceded to the following conventions:

- 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.
- 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft.
- 1970 Hague Convention on the Unlawful Seizure of Aircraft.
- 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Montreal Convention.
- 1991 Convention on the Marking of Plastic Explosives for the Purposes of Detection.

South Africa must still ratify the following Conventions:

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10 March 1988.
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf, done at Rome on 10 March 1988.
- International Convention Against the Taking of Hostages, adopted by the GA on 17 December 1979.
- Convention on the Physical Protection of Nuclear Materials, adopted at Vienna on 26 October 1979. South Africa has signed this Convention.
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted by the GA on 14 December 1973.
- International Convention for the Suppression of Terrorist Bombings, adopted by the GA on 15 December 1997; entered into force on 23 May 2001. South Africa signed it on 23 December 1999.
- International Convention for the Suppression of Terrorist Financing, adopted by the GA on 9 December 1999. South Africa signed the Convention on 10 November 2001.
- Convention of the Organisation of African Unity on the Suppression and Combating of Terrorism South Africa signed this Convention on 12 July 1999.

4.2 International Police Co-operation

The South African Police Service co-operates internationally in respect of the exchange of criminal information and police co-operation also through the Interpol channels. The South African Police Service has concluded police co-operation agreements which, without mentioning terrorism specifically, can be used to obtain co-operation in terrorism investigations. One example in this regard, is the Agreement on Mutual Co-operation in the Field of Crime Combating, concluded between 12 Southern African States, namely Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Zambia, Zimbabwe and Tanzania. This agreement provides for cross border investigations and operations in general and even undercover operations. It could also be used for counter-terrorist investigations/operations. In addition, the South African Police Service has concluded police co-operation agreements with a number of other States.

Question 5: Operative sub-paragraph 2(a): What legislative or other measures are in place to give effect to this sub-paragraph. In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help to prevent such activities?

Response:

5.1 As mentioned in B1.2.1 above, in its decision-making process, the NCACC acts in accordance with a set of guiding principles and criteria, one of these being that it must avoid contributing to terrorism. This stipulation is outlined in Section 15 (g) of the NCACC Bill, which specifies that in its consideration of applications, the Committee must "avoid contributing to terrorism and crime". It should be noted that South Africa does not have legislation relating to international terrorism, and specifically to the financing of terrorism. However, the legislative framework indicated in B.1 above provides a comprehensive basis to address the requirements of this operative paragraph. In particular the Regulation of Foreign Military Assistance Act (attached as Addendum B) is broad enough to address the requirements of this provision. In addition, the National Arms Control Bill and the Anti-Terrorism Bill, when they come into operation, will address any shortcomings in the legislative framework.

Question 6: Operative sub-paragraph 2(b): What other steps are being taken to prevent the commission of terrorist acts, and in particular what early warning mechanisms exist to allow the exchange of information with other States?

Response:

6.1 The exchange of intelligence occurs on two levels namely (i) national and (ii) international.

(i) This process involves the liaison of continuous relevant intelligence directly to the National Intelligence Co-ordinating Committee (NICOC) and the Office of the Ministry of Intelligence for further liaison with parliament, Other Ministries (Foreign Affairs) and the Early Warning Centre at the Union Buildings. A 24-hour Alert Centre at the National Intelligence Agency and an Operations Centre at the South African Secret Service ensure continuous links in this regard.

(ii) Ad hoc liaison with regard to relevant intelligence is done on a regular basis with foreign intelligence services represented in South Africa as well as senior diplomats at foreign missions without declared intelligence representation. This channel is also often used for liasing on early warning information relevant for specific States.

Question 7: Operative sub-paragraph 2(c): What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph? It would be helpful if States supplied examples of any relevant action taken.

Response:

7.1. Please refer to B 1.1 above. The Aliens Control Act, 1991 (Act No 96 of 1991) (Addendum G) and the Regulation of Foreign Military Assistance Act, 1998 (Act No 15 of 1998) (Addendum B) are particularly relevant here.

7.2. Since the adoption of resolution 1373 (2001), there have been no cases which are directly applicable.

Question 8: Operative sub-paragraph 2(d): What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

Response:

8.1 South Africa currently does not have legislation relating specifically to terrorism. The Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998) (see paragraph B1.1.5 above and Addendum B) is, however, relevant here.

Question 9: Operative sub-paragraph 2(e): What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

Response:

9.1 Section 54 of the Internal Security Act on terrorism (attached as Addendum D) is a remnant of the apartheid system and relates purely to acts of domestic terrorism. It has not been used to obtain a conviction since the democratic transformation in 1994. In cases of suspected "domestic terrorism" that have been committed since 1994, the acts have been prosecuted as common law crimes (e.g. murder, intimidation etc). The Anti-Terrorism Bill (see point B.1.2.3 above) will provide a comprehensive legal framework to address this issue.

The draft Anti-Terrorism Bill (attached As Addendum E Part 2) deals with the following matters:

- The Bill provides for terrorist acts as crimes. Any person who, in the Republic or elsewhere, commits a terrorist act or any contravention of the Bill commits an offence and should be liable on conviction to imprisonment for life (see clause 2);
- Any person who provides material, logistical or organisational support or any resources or conceals or disguises the nature, location, source, or ownership of such support or resources, knowing or intending that such support or resources are to be used in the commission of an offence under the provisions of the Bill or in the concealment or an escape from the commission of an offence under the provisions of the Bill or participates in the activities of a terrorist organisation, commits an offence and is liable on conviction to the same penalty provided for the principal offence (see clause 3);
- Any person who knows that any other person intends to commit or has committed any offence under the Bill and who harbours or conceals that other person, commits an offence and should be liable on conviction to the penalty for the offence which that person has committed or intended to commit would be liable, as the case may be (see clause 3);
- Membership of terrorist organisations shall be liable to imprisonment for five years; (see clause 4);
- Hijacking of aircraft shall be liable to imprisonment for life (see clause 6);
- Endangering the safety of maritime navigation shall be liable to imprisonment for a period not exceeding 20 years, or to a fine or both unless the death of a person resulted from the action, in which case the penalty is life imprisonment (see clause 7);
- Terrorist bombings are liable to a penalty of imprisonment for life (see clause 8);
- Hostage taking is liable to imprisonment for life (see clause 9);
- Attacks on internationally protected persons are liable to a fine or imprisonment not exceeding six months (see clause 10);
- Murder or kidnapping of internationally protected persons are liable to penalties of imprisonment for life (see clause 11);
- Damage to the property occupied by internationally protected persons is liable to a penalty not exceeding six years (see clause 12);
- Offences related to fixed platforms are liable to a fine, a prison sentence of 20 years, or if a death results from the act then imprisonment for life (see clause 13);
- Offences related to nuclear terrorism are liable for the penalty of life imprisonment (see clause 14).

Question 10: Operative sub-paragraph 2(f): What procedures and mechanisms are in place to assist other States? Please provide any available details on how these have been used in practice.

Response:

10.1 Extremely good co-operation, support and co-ordination exists between the South African Police Service, inclusive of its Intelligence Division, the civilian intelligence agencies and the South African National Defence Force relating to investigations and when relevant, court directed processes.

10.2 In addition, the South African Police Service has engaged, assisted and exchanged information with their law enforcement counterparts in several States.

10.3 The following procedures and mechanism are in place to assist other States:

10.3.1 International Co-operation in Criminal Matters Act, 1996 (Act No 75 of 1996)

This Act facilitates the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between the Republic and foreign States. The Act provides for mechanisms to give judicial effect to requests for assistance in obtaining evidence providing inter alia for the examination of witnesses, mutual execution of sentences and the confiscation and transfer of the proceeds of crime. The Act is attached as Addendum M.

10.3.2 Mutual Legal Assistance Agreements

Since 1994, South Africa has concluded twelve Mutual Legal Assistance Treaties. The treaties are designed to aid in the provision of Mutual Legal Assistance on a bilateral level and provide inter alia for the requirements and mechanisms required to give effect to a request for mutual legal assistance. A request for mutual legal assistance, however, is not dependent on the existence of a treaty, and can be given effect to on an ad hoc basis in terms of the above-mentioned International Co-operation in Criminal Matters Act.

The said Act does not exclude other forms of mutual assistance, or restrict it to mutual assistance in terms of agreements. Informal requests for assistance are often received through Interpol channels, or assistance is requested on a high Governmental level, such as Ministerial level, and is entertained when allowed by South Africa's laws.

10.4 Procedures that are followed upon receipt of a request for assistance from another State:

Upon receipt of a request for assistance from another State, the Department of Foreign Affairs forwards the request to the Department of Justice and Constitutional Development. The latter Department considers the matter with a view to determining whether or not the request is of a formal nature, i.e. whether there is a legal compulsion for the Department to approach the Minister for approval to assist. Once ministerial approval is obtained, the Department of Justice and Constitutional Development refers the matter to the National Department of Public Prosecutions (NDPP) and Interpol for further assistance. The request for assistance will either be dealt with by Interpol or both Interpol and the NDPP. Where necessary, a Magistrate will be appointed to assist. After the matter has been handled in terms of the above procedures, the Government will forward a response to the requesting State.

Question 11: Operative sub-paragraph 2(g): How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent forgery etc?

Response:

11.1 The Border Control Operational Committee implements preventative measures at borders (see B.2.1 above).

11.2 Identity documents

Strict procedures are in place to ensure that South African identity documents are issued only to persons legally entitled thereto.

Apart from ensuring that the provisions of the legislation concerned are complied with, the status of each applicant is also carefully checked against the National Population Register (NPR) before issuing the identity document. South Africa, over the years, has built up a comprehensive fingerprint and photo record of all persons 16 years and older recorded in the NPR and also of certain classes of aliens.

The South African identity document is presently in the form of a booklet, but for reasons of inter alia better security, the Department of Home Affairs is in the process of changing this to a secure Smart Card type identity document, which will contain advanced security features to protect the document against forgery.

11.3 Travel documents

South Africa introduced, with effect from 22 May 1996, a machine-readable new format travel document containing advanced security features to protect the document against forgery.

To be issued with a South African travel document the applicant must have a South African identity number and in the case of applicants 16 years and older their fingerprints and photos must also be recorded in the NPR.

In addition, there is also a Passport Stoplist, which contains information of individuals whose applications would require special attention or who may not be issued with travel documents.

Each applicant's status and particulars are carefully checked against the NPR and Passport Stoplist before a travel document is issued.

The South African Passports and Travel Documents Regulations issued under the South African Passports and Travel Documents Act, 1994 (Act no 4 of 1994) also contain specific provisions dealing with the refusal or revocation of travel documents. Although the Regulations do not specifically refer to terrorists, participation in terrorist activities, or membership of terrorist organisations, it would be possible to refuse or evoke a travel document under these circumstances if the aforesaid can be brought within the ambit of a criminal offence and the accused stands to be charged with such criminal offence (Regulation 14 and 15). The Act is attached as Addendum N.

SECTION C: OPERATIVE PARAGRAPH 3

Implementation of Operative Paragraph 3 (a) to (g) of resolution 1373 (2001)

Operative sub-paragraph 3 (a): Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

Question 1: What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

Response:

1.1 South Africa is a member of Interpol and the Southern African Regional Police Chiefs Co-ordinating Committee (SARPCCO) and exchanges information with other law enforcement agencies in these fora on a regular basis. In addition, direct liaison mechanisms have been established between the South African Police Service's Division: Crime Intelligence and the FBI to enhance the expeditious flow, exchange and utilisation of intelligence. Where relevant, the South African Police Service also liaises directly with members responsible for security or law enforcement at foreign Embassies and High Commissions on issues pertinent to terrorism, human smuggling and travel document fraud.

Operative sub-paragraph 3(b): Exchange information in accordance with international and domestic law and co-operate on administrative and judicial matters to prevent the commission of terrorist acts;

Question 2: What steps have been taken to exchange information and co-operate in the areas indicated in this sub-paragraph?

Response:

2.1 No such event has occurred to date, but as previously mentioned mechanisms do exist to operationalise this. The South African Police Service, supported by the rest of the South African intelligence community, stands prepared and ready to provide all support when required.

2.2 The International Co-operation in Criminal Matters Act, 1996 (Act No 75 of 1996) (attached as Addendum M) allows a South African court to request another State to assist it in obtaining evidence or testimony of a person residing there. The evidence would be admissible in a South Africa court. Furthermore, South African courts may request a foreign court for assistance in administering its judgement should the accused reside or have assets in the foreign country. This Act also facilitates the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between the Republic and foreign States. The Act provides for mechanisms to give judicial effect to requests for assistance in obtaining evidence providing inter alia for the

examination of witnesses, mutual execution of sentences and the confiscation and transfer of the proceeds of crime.

Operative sub-paragraph 3(c): Co-operate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

Question 3: What steps have been taken to co-operate in the areas indicated in this sub-paragraph?

Response:

3.1 The South African Police Service is co-operating with its law enforcement counterparts in several other States.

3.2 The South African Government utilises the following legislation, arrangements and agreements to co-operate with other States:

3.2.1 International Co-operation in Criminal Matters Act, 1996 (Act No 75 of 1996)

This Act facilitates the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between the Republic and foreign States. The Act provides for mechanisms to give judicial effect to requests for assistance in obtaining evidence providing inter alia for the examination of witnesses, mutual execution of sentences and the confiscation and transfer of the proceeds of crime. The Act is attached as Addendum M.

3.2.2 Extradition Act, 1962 (Act No 67 of 1962)

This Act provides for all matters related to extradition. Extradition is not dependent on a treaty and can take place, in accordance with the provisions of the act, on an *ad hoc* basis if the President consents to it. The Act is attached as Addendum O.

3.2.3 Extradition Agreements

South Africa has concluded thirteen Extradition Agreements with other States. It should be noted however that extradition between the Republic and a foreign State is not dependent upon the existence of an Agreement and can take place on an *ad hoc* basis as indicated in paragraph 3.2.2 above.

3.2.4 Mutual Legal Assistance Agreements

Since 1994, South Africa has concluded twelve Mutual Legal Assistance Treaties with other States. The treaties are designed to aid in the provision of mutual legal assistance on a bilateral level and provide inter alia for the requirements and mechanisms required to give effect to a request for mutual legal assistance. A request for mutual legal assistance however is not dependent on the existence of a treaty, and can be given effect on an ad hoc basis in terms of the above-mentioned International Co-operation in Criminal Matters Act (attached as Addendum M).

Operative sub-paragraph 3(d): Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

Question 4: What are the South African Government's intentions regarding the signing and/or ratification of the conventions and protocols referred to in this sub-paragraph?

Response:

4.1 The South African Government has signed the UN Conventions that are open for signature. It has the firm intention of submitting each Convention to Parliament for ratification, in accordance with its constitutional procedures, and ensuring that the necessary legislation to implement each Convention in its domestic law is in place.

The following UN international Conventions have been signed:

- Convention on the Physical Protection of Nuclear Materials, adopted at Vienna on 26 October 1979.
- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly on 15 December 1997; entered into force on 23 May 2001. South Africa signed it on 23 December 1999.
- International Convention for the Suppression of Terrorist Financing, adopted by the General Assembly (GA) on 9 December 1999. South Africa signed the Convention on 10 November 2001.

South Africa has also signed the Convention of the Organisation of African Unity on the Suppression and Combating of Terrorism on 12 July 1999.

South Africa has ratified or acceded to the following conventions:

- 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.
- 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft.
- 1970 Hague Convention on the Unlawful Seizure of Aircraft.
- 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Montreal Convention.
- 1991 Convention on the Marking of Plastic Explosives for the Purposes of Detection.

South Africa must still ratify the following Conventions:

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10 March 1988.
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf, done at Rome on 10 March 1988.
- International Convention Against the Taking of Hostages, adopted by the GA on 17 December 1979.
- Convention on the Physical Protection of Nuclear Materials, adopted at Vienna on 26 October 1979. South Africa has signed this Convention.
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted by the GA on 14 December 1973.
- International Convention for the Suppression of Terrorist Bombings, adopted by the GA on 15 December 1997; entered into force on 23 May 2001. South Africa signed on 23 December 1999.

- International Convention for the Suppression of Terrorist Financing, adopted by the GA on 9 December 1999. South Africa signed it on 10 November 2001.
- Convention of the Organisation of African Unity on the Suppression and Combating of Terrorism South Africa signed this Convention on 12 July 1999.

4.2 Convention of the Organisation of African Unity on the Suppression and Combating of Terrorism

South Africa signed this Convention on 12 July 1999.

Operative sub-paragraph 3(e): Increase co-operation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

Question 5: Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph.

Response:

5.1 General

The South African legislative processes, including the finalisation of the Anti-Terrorism Bill are currently underway and will provide the necessary legal framework (apart from what exists) for South Africa to implement its obligations in terms of the international conventions against terrorism.

In terms of the South African Constitution, 1996 (Act No. 108 of 1996); both Houses of Parliament (the National Assembly and the National Council of Provinces) must approve the ratification of international agreements. The Constitution further provides that any international agreement becomes law in the Republic of South Africa when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. This, therefore, means that for South Africa to enforce an international agreement against individuals in South Africa it must enact into law by national legislation such an agreement. It will thus be necessary that national legislation be drafted to implement the outstanding terrorism conventions as part of the process to ratify said conventions. In this regard, please see the Discussion Paper of the South African Law Commission (SALC) attached to this report (Addendum E), and the summary of its provisions above. A copy of the South African Constitution is attached as Addendum P.

5.2 Implementation of the Civil Aviation Conventions ratified by South Africa

The Civil Aviation Offences Act, 1972 (Act No.10 of 1972), was adopted by Parliament in order to give effect to the above-mentioned Conventions dealing with Civil Aviation. The Act is attached as Addendum I. The Act criminalises, in general, the interference with aircraft in flight or endangering flight crew, passengers, aircraft and aviation facilities. The Act is currently being amended in order to inter alia create graver penalties for infringements of the Act, and by analogy, of the relevant Conventions. In terms of the Civil Aviation Regulations, 1981, "any person who contravenes or fails to comply with any of the provisions of a safety plan approved by the Minister and whereof the contents have been brought to his notice, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding R10 000 or imprisonment not exceeding 10 years or to both such fine and imprisonment.

5.3 Implementation of the Convention on the Marking of Plastic Explosives for the Purpose of Identification

The Convention on the Marking of Plastic Explosives for the Purpose of Identification was implemented by the Explosives Amendment Act of 1997, which amended the Explosives Act, 1956 (Act No. 26 of 1956). The Explosive Act imposes prohibitions on certain acts relating to plastic explosives which are not marked with detection agents and require certain persons to furnish the Chief Inspector of Explosives with information with regard to explosives. The Act is attached as Addendum Q.

Operative sub-paragraph 3(f): Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;

Question 6: What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status? Please supply examples of any relevant cases.

Response:

6.1 South Africa is Party to the UN Convention and Protocol Relating to the Status of Refugees. South Africa is also Party to the Organisation of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa. To implement the aforesaid multilateral conventions, South Africa has the Refugees Act, 1998 (Act No. 130 of 1998). Sections 4 (1)(a) and (c) of the said Act make provision for the exclusion of persons from refugee status if specific circumstances are present. Circumstances such as having planned, facilitated or participated in the commission of terrorist acts would exclude a person from being granted refugee status. The Act is attached as Addendum R.

Asylum-seeker details are checked against lists of indicted, sanctioned, etc, persons and/or organisations obtained from agencies such as the UNHCR, the UN and other international organisations (e.g. INTERPOL). The South African Police Service has also obtained access to the Refugee Database, which will assist it in determining the presence of undesirable persons within the borders of South Africa.

6.2 Procedures followed by the Government in respect of refugee applications:

Refugee applications are governed by the Refugees Act, 1998 (Act No. 130 of 1998) (Addendum R). In terms of Section 3 of the Refugees Act, a person qualifies for refugee status if that person:

"(a) owing to a well founded fear of being prosecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or

(b) owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere: or

(c) is a dependant of a person contemplated in paragraph (a) or (b)".

In accordance with the Refugees Act, an application for asylum must be made in person with the prescribed procedures to a Refugee Reception Officer at any of the five Refugee Reception Offices. An asylum applicant has to comply with the fingerprinting and photographing requirements pursuant to this Act. The applicant also has to present his/her identification and travel documents, if in possession of these documents. The Identification Act, 1997 (Act No 68 of 1997) is attached as Addendum S. The South African Passports and Travel Documents Amendment Act, 1997 (Act No 1505 of 1997) is attached as Addendum N.

The Refugee Reception Officer will interview the applicant in order to obtain information regarding the applicant's claim to Refugee Status. In this regard, the applicant's personal details are checked against the Visa and Entry Stoplist, the Movement Control System and then placed on the Refugee Affairs System, which is designed to automate the various stages of an application for asylum. The Movement Control System is updated automatically at certain critical points during the processing of the application.

The application will subsequently be submitted to a Refugee Status Determination Officer to make a decision regarding the application. The Refugee Status Determination Officer may conduct an adversarial hearing to obtain information bearing on the applicant's eligibility. The details of asylum seekers are also checked against lists of indicted persons or organisations obtained from the UNHCR or other international organisations. Once all the facts of the application have been established, through an assessment of the credibility of the claimant and an evaluation of the country of origin information, the Refugee Status Determination Officer makes a decision.

In the event that the application is rejected as manifestly unfounded, abusive or fraudulent, it has to be submitted to the Standing Committee for Refugee Affairs to review the decisions of the Refugee Status Determination Officer. Asylum seekers may lodge an appeal with the Refugee Appeal Board, if the Refugee Status Determination Officer has rejected his/her application for asylum. The Refugee Appeal Board may request the applicant to appear before it and provide such information as it may deem necessary. The Board may also make further inquiries, undertake further investigations or refer the matter back to the Standing Committee for further inquiry before reaching a decision.

Operative sub-paragraph 3(g): Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organisers or facilitators of terrorist acts, and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists;

Question 7: What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognised as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

Response:

7.1 In terms of the Refugee Law in South Africa, the Refugees Act, 1998 (Act No 130 of 1998) (Addendum R), refugee status is granted when a person can evince a well-founded fear of persecution by reason of political opinion. Claims based solely on political activities, motivations, etc. are not successful.

7.2 Section 4 of Act, will ensure that persons alleged to be involved with terrorist activities etc. would be excluded from refugee status therefore not causing an obstruction to extradition orders.

7.3 There are no examples of any relevant cases.

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LIST OF ADDENDA

ADDENDUM A: Currency and Exchange Act No. 9 of 1933

ADDENDUM B: Regulation of Foreign Military Assistance Act No. 15 of 1998

ADDENDUM C: Prevention of Organised Crime Act No. 121 of 1998

ADDENDUM D: Internal Security Act No. 74 of 1982

ADDENDUM E: South African Law Commission Discussion Paper (including the Anti-Terrorism Bill)

ADDENDUM F: Financial Intelligence Centre Bill

ADDENDUM G: Aliens Control Act No. 96 of 1991

ADDENDUM H: International Air Services Act No. 60 of 1993

ADDENDUM I: Civil Aviation Offences Act No. 10 of 1972

ADDENDUM J: Non-Proliferation of Weapons of Mass Destruction Act No. 87 of 1993

ADDENDUM K: Armaments Development and Production Act No. 57 of 1968

ADDENDUM L: Arms and Ammunition Act No. 75 of 1969

ADDENDUM M: International Co-operation in Criminal Matters Act No. 75 of 1996

ADDENDUM N: South African Passports and Travel Documents Act No. 4 of 1994

ADDENDUM O: Extradition Act No. 67 of 1962

ADDENDUM P: Constitution of the Republic of South Africa, Act 108 of 1996

ADDENDUM Q: Explosives Act No. 26 of 1956, amended by the Explosives Amendment Act of 1997

ADDENDUM R: Refugees Act No. 130 of 1998

ADDENDUM S: Identification Act No. 68 of 1997

* Addenda to this document are available for consultation with the Secretariat.